

SERVED : August 31, 1992

NTSB Order No. EA-3643

**UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.**

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of August, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-9696

v.

BRUCE F. CHAILLE,

Respondent.

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr. issued on March 30, 1990 at the conclusion of an evidentiary hearing.¹ The law judge reversed the Administrator's Order which had imposed a 20 day suspension of respondent's airline transport pilot certificate but waived the imposition of the penalty because the respondent reported the incident through the Aviation Safety

¹A copy of the oral initial decision, an excerpt from the transcript is attached.

Reporting Program (ASRP) . The suspension was in response to respondent's alleged violation of sections 91.9 and 91.87(h) of the Federal Aviation Regulations (FAR).² For the reasons that follow, we grant the appeal and reverse the law judge's decision.

The incident giving rise to this proceeding occurred on September 27, 1987, at which time respondent was operating as second in command an Eastern Air Lines DC-9, Flight 603, landing at William B. Hartsfield Atlanta International Airport.

The Administrator alleged and respondent admitted that flight 603 was cleared to land on Runway 26L and that it acknowledged the clearance. It was also alleged and admitted that the flight landed on Runway 26R without receiving an amended clearance.

Several facts were stipulated at the hearing. The parties stipulated that during the approach, the terminal arrival radar H (TAR-H) controller assigned the flight to Runway 26L, and that Eastern 603 acknowledged the transmission. It was also stipulated that the arrival radar V (AR-V) controller cleared Eastern 603 for a visual approach to Runway 26L, and that the clearance was

²FAR sections 91.9 and 91.87(h) (currently sections 91.13(a) and 91.129(h)) state, in relevant part:

"§ 91.9 *Careless or reckless operation.*

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

"§ 91.87

(h) *Clearances required.* No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless an appropriate clearance is received from ATC. . . ."

acknowledged. It was stipulated that at the time of the incident, the ATL automated terminal information system (ATIS) was transmitting information that Runway 26L was the appropriate runway in use for landing, and that the information was received by Eastern 603. It was stipulated that the local tower controller cleared Eastern 603 to land on Runway 26L and that Eastern 603 acknowledged the clearance. Finally, it was stipulated that other aircraft landing at the time were being cleared to land on Runway 26L.

During the hearing, the local controller who gave Eastern 603 the clearance to land on Runway 26L testified for the Administrator that he gave another plane, Delta 657, a clearance to take off on Runway 26R (TR 26). He also testified that Eastern 603 landed perpendicular to Delta 657, which held short on the taxiway after reporting to ATC that there was an aircraft landing on the runway (TR 27) , and that in relation to Delta 657, the Eastern flight came "right by his nose" (TR 29).

The law judge based his reversal of the Administrator's Order on the fact that Eastern 603 was " . . . well on their way to a few thousand feet above the runway," and that respondent rightfully relied on the Captain with whom he had flown often and for whom he had " . . . great admiration and respect." The law judge also gave weight to the testimony that landings at Atlanta International Airport are customarily on Runway 26R.

The Administrator bases his appeal on the assertion that respondent's detrimental reliance on the words of the Captain of

the flight is not sufficient to invoke the Coleman³ defense because " . . . respondent had a reasonable basis to dispute the accuracy of the information the captain related to him" (Adm. Br. at 11) . He cites testimony in the record in support of his position. First, he notes respondent's admission (at TR 72-74) that he had heard the clearance to land on Runway 26L, and, second, he points out respondent's acknowledgment (at TR 52-53) that he had heard the exchange between the tower and Delta flight 657.⁴ It is clear from Coleman and the cases that follow it that if the pilot not handling radio communications does not hear or understand a transmission, he may, in certain circumstances, rely on the advice of the pilot working the radio as to the transmission's content. However, the Administrator argues correctly, we think, that this should not be extended to situations where the pilot who seeks to rely on the radio operator has reason to doubt the accuracy of the advice he is given by the other pilot.

Respondent asserts that the transmissions he heard created enough doubt in his mind to prompt him to ask the Captain whether they were on the proper runway, to which the Captain responded, "Yes, land on the runway" (TR 73) . Respondent maintains that this was enough to assure him that they were on the correct runway, and

³*Administrator v. Coleman*, 1 NTSB 229 (1968) (pilot at the controls has a right to rely on the co-pilot's confirmation of the pilot's understanding of ATC clearance).

⁴Although the respondent claimed not to have heard any of the references to Runway 26L being broadcast in the cockpit for the visual approach (TR 50-51) , he later indicated (TR 73-74) that he did hear the transmission from ATC clearing Eastern 603 to land on Runway 26L simultaneous with hearing the Delta transmission.

that there was no need to contact ATC for further clarification. We disagree.

The Board finds that the Administrator's position is correct in regard to the *Coleman* defense. If a communication is not heard or understood, a brief confirmation is acceptable, but if there is confusion about what was heard, the questioning must be more definite.⁵

In the interest of safety, the degree of confusion in the cockpit that necessarily results when the pilot operating the controls has heard two conflicting characterizations of the landing clearance, should prompt a request for clarification from ATC. Force of habit and respect are not factors to be considered by a pilot determining something as important as a landing clearance.

ACCORDINGLY , IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The law judge's initial decision is reversed: and
3. The Administrator's order is affirmed.⁶

VOGT , Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT , Members of the Board, concurred in the above opinion and order.

⁵The crux of the problem seems to be that this form of questioning was not direct enough. Respondent did not say for example, "I heard Runway 26L, what did you hear." Such a specific question might have jogged the Captain's memory as to what he actually heard. Then, the flight might have obtained an amended clearance or taken other action to avoid landing On the wrong runway.

⁶Sanction is waived in accordance with the terms of the ASRP.